



February 22, 2008

ENGROSSED HOUSE BILL No. 1042

DIGEST OF HB 1042 (Updated February 19, 2008 2:16 pm - DI 106)

Citations Affected: IC 23-1; IC 23-18; IC 24-4; noncode.

Synopsis: Intent to sell sexually explicit materials. Requires a person that intends to offer for sale or sell sexually explicit materials to register and file a statement with the secretary of state. Imposes a \$250 filing fee and requires the secretary of state to notify certain local officials of the county in which the person locates the business. Provides that a person that offers for sale or sells sexually explicit materials without registering and filing the statement commits a Class B misdemeanor.

Effective: July 1, 2008.

Goodin, Harris T, Stutzman

(SENATE SPONSORS — STEELE, LEWIS)

January 8, 2008, read first time and referred to Committee on Family, Children and Human Affairs.

January 24, 2008, amended, reported — Do Pass.

January 29, 2008, read second time, amended, ordered engrossed.

January 30, 2008, engrossed. Read third time, passed. Yeas 88, nays 5.

SENATE ACTION

February 5, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 21, 2008, amended, reported favorably — Do Pass.

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February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1042

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1-55 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]:

4 **Chapter 55. Intention to Sell Sexually Explicit Materials**

5 **Sec. 1. This chapter does not apply to a person who sells sexually**
6 **explicit materials on June 30, 2008, unless the person changes the**
7 **person's business location after June 30, 2008.**

8 **Sec. 2. A person (as defined in IC 35-41-1-22) that intends to**
9 **offer for sale or sell sexually explicit materials shall register with**
10 **the secretary of state the intent to offer for sale or sell sexually**
11 **explicit materials and provide a statement detailing the types of**
12 **materials that the person intends to offer for sale or sell.**

13 **Sec. 3. (a) As used in this section, "local officials of the county"**
14 **refer to all of the following:**

15 (1) The county executive.

16 (2) If a person described in section 2 of this chapter intends to
17 locate in a municipality, the executive of the municipality.

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(3) A local entity that supervises a zoning board in the county.

(b) After receiving a registration described in section 2 of this chapter, the secretary of state shall notify the local officials of the county in which a person described in section 2 of this chapter intends to offer for sale or sell sexually explicit materials of the registration filed under section 2 of this chapter.

SECTION 2. IC 23-18-12-3, AS AMENDED BY P.L.60-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) Except as provided in subsection (e), the secretary of state shall collect the following fees when the documents described in this section are delivered for filing:

Document	Fee
(1) Articles of organization	\$90
(2) Application for use of indistinguishable name	\$20
(3) Application for reservation of name	\$20
(4) Application for renewal of reservation	\$20
(5) Notice of transfer or cancellation of reservation	\$20
(6) Application of registered name	\$30
(7) Application for renewal of registered name	\$30
(8) Certificate of change of registered agent's business address	No Fee
(9) Certificate of resignation of agent	No Fee
(10) Articles of amendment	\$30
(11) Restatement of articles of organization	\$30
(12) Articles of dissolution	\$30
(13) Application for certificate of authority	\$90
(14) Application for amended certificate of authority	\$30
(15) Application for certificate of withdrawal	\$30
(16) Application for reinstatement following administrative dissolution	\$30
(17) Articles of correction	\$30
(18) Certificate of change of registered agent	No Fee
(19) Application for certificate of	

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- 1 existence or authorization \$15
- 2 (20) Biennial report filed in writing,
- 3 including by facsimile \$30
- 4 (21) Biennial report filed by electronic medium \$20
- 5 (22) Articles of merger involving a
- 6 domestic limited liability company \$90
- 7 (23) Any other document required or
- 8 permitted to be filed under this article \$30
- 9 **(24) Registration of intent to sell**
- 10 **sexually explicit materials, products, or services \$250**
- 11 (b) The fee set forth in subsection (a)(20) for filing a biennial report
- 12 is fifteen dollars (\$15) per year, to be paid biennially.
- 13 (c) The secretary of state shall collect a fee of \$10 each time process
- 14 is served on the secretary of state under this article. If the party to a
- 15 proceeding causing service of process prevails in the proceeding, that
- 16 party is entitled to recover this fee as costs from the nonprevailing
- 17 party.
- 18 (d) The secretary of state shall collect the following fees for copying
- 19 and certifying the copy of any filed documents relating to a domestic
- 20 or foreign limited liability company:
- 21 (1) One dollar (\$1) per page for copying.
- 22 (2) Fifteen dollars (\$15) for certification stamp.
- 23 (e) If the document described in subsection (a)(1) or (a)(13) is filed
- 24 by electronic means as prescribed by the secretary of state, the
- 25 secretary of state shall collect a filing fee of seventy-five dollars (\$75).
- 26 SECTION 3. IC 24-4-16 IS ADDED TO THE INDIANA CODE AS
- 27 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 28 1, 2008]:
- 29 **Chapter 16. Sexually Explicit Materials**
- 30 **Sec. 1. As used in this chapter, "person" has the meaning set**
- 31 **forth in IC 35-41-1-22.**
- 32 **Sec. 2. (a) As used in this chapter, "sexually explicit materials"**
- 33 **means a product or service:**
- 34 **(1) that is harmful to minors (as described in IC 35-49-2-2),**
- 35 **even if the product or service is not intended to be used by or**
- 36 **offered to a minor; or**
- 37 **(2) that is designed for use in, marketed primarily for, or**
- 38 **provides for:**
- 39 **(A) the stimulation of the human genital organs; or**
- 40 **(B) masochism or a masochistic experience, sadism or a**
- 41 **sadistic experience, sexual bondage, or sexual domination.**
- 42 **(b) The term does not include:**

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- 1 (1) birth control or contraceptive devices; or
2 (2) services, programs, products, or materials provided by a:
3 (A) communications service provider (as defined in
4 IC 8-1-32.6-3);
5 (B) physician; or
6 (C) public or nonpublic school.

7 Sec. 3. A person or an employee or agent of a person may not
8 offer for sale or sell sexually explicit materials unless a registration
9 and statement are properly filed as described in IC 23-1-55-1.

10 Sec. 4. A person or an employee or agent of a person who
11 knowingly or intentionally offers for sale or sells sexually explicit
12 materials in violation of this chapter commits unregistered sale of
13 sexually explicit materials, a Class B misdemeanor.

14 SECTION 4. [EFFECTIVE JULY 1, 2008] IC 24-4-16-4, as added
15 by this act, applies to offenses committed after June 30, 2008.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1042, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 11 and 12, begin a new paragraph and insert:

"Sec. 2. After receiving a registration described in section 1 of this chapter, the secretary of state shall notify:

(1) the county executive; and

(2) all local zoning boards;

located in the county in which a entity described in section 1 of this chapter intends to sell sexually explicit materials, products, or services of the registration filed under section 1 of this chapter."

Page 2, line 15, delete "include" and insert **"include:**

(1)".

Page 2, delete line 16 and insert **"devices; or**

(2) services, programs, products, or materials provided by a communications service provider (as defined in IC 8-1-32.6-3)."

Page 2, line 22, delete "recklessly" and insert **"knowingly or intentionally"**.

and when so amended that said bill do pass.

(Reference is to HB 1042 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 8, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1042 be amended to read as follows:

Page 2, line 10, delete "if:" and insert **"if the materials, products or services are entirely without redeeming social value and:"**.

(Reference is to HB 1042 as printed January 25, 2008.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1042 be amended to read as follows:

Page 1, delete lines 12 through 17, begin a new paragraph and insert:

"Sec. 2. (a) As used in this section, "local officials of the county" refer to all of the following:

(1) The county executive.

(2) If a business described in section 1 of this chapter intends to locate in a municipality, the executive of the municipality.

(3) All local zoning boards that have jurisdiction in the county.

(b) After receiving a registration described in section 1 of this chapter, the secretary of state shall notify the local officials of the county in which an entity described in section 1 of this chapter intends to sell sexually explicit materials, products, or services of the registration filed under section 1 of this chapter."

Page 2, delete line 1.

(Reference is to HB 1042 as printed January 25, 2008.)

STUTZMAN

 COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1042, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "Materials," and insert "**Materials**".

Page 1, delete line 5.

Page 1, line 6, after "Sec. 1." insert "**This chapter does not apply to a person who sells sexually explicit materials on June 30, 2008, unless the person changes the person's business location after June 30, 2008.**

Sec. 2."

Page 1, line 6, delete "person, firm, corporation, association, partnership," and insert "**person (as defined in IC 35-41-1-22)**".

Page 1, line 7, delete "limited liability corporation, or other entity".

Page 1, line 7, after "to" insert "**offer for sale or**".

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Page 1, line 8, delete "materials, products, or services" and insert **"materials"**.

Page 1, line 9, after "to" insert **"offer for sale or"**.

Page 1, line 9, delete "materials," and insert **"materials"**.

Page 1, line 10, delete "products, or services".

Page 1, line 11, delete "materials, products, or services" and insert **"materials"**.

Page 1, line 11, delete "are intended to be sold." and insert **"the person intends to offer for sale or sell."**

Page 1, line 12, delete "Sec. 2." and insert **"Sec. 3."**

Page 1, line 15, delete "business" and insert **"person"**.

Page 1, line 15, delete "1" and insert **"2"**.

Page 1, line 17, delete "All local zoning boards that have jurisdiction in the" and insert **"A local entity that supervises a zoning board in the county."**

Page 2, delete line 1.

Page 2, line 2, delete "1" and insert **"2"**.

Page 2, line 4, delete "an entity" and insert **"a person"**.

Page 2, line 4, delete "1" and insert **"2"**.

Page 2, line 5, after "to" insert **"offer for sale or"**.

Page 2, line 5, delete "materials, products, or services" and insert **"materials"**.

Page 2, line 6, delete "1" and insert **"2"**.

Page 2, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 2. IC 23-18-12-3, AS AMENDED BY P.L.60-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) Except as provided in subsection (e), the secretary of state shall collect the following fees when the documents described in this section are delivered for filing:

Document	Fee
(1) Articles of organization	\$90
(2) Application for use of indistinguishable name	\$20
(3) Application for reservation of name	\$20
(4) Application for renewal of reservation	\$20
(5) Notice of transfer or cancellation of reservation	\$20
(6) Application of registered name	\$30
(7) Application for renewal of registered name	\$30
(8) Certificate of change of registered agent's business address	No Fee

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(9) Certificate of resignation of agent	No Fee
(10) Articles of amendment	\$30
(11) Restatement of articles of organization	\$30
(12) Articles of dissolution	\$30
(13) Application for certificate of authority	\$90
(14) Application for amended certificate of authority	\$30
(15) Application for certificate of withdrawal	\$30
(16) Application for reinstatement following administrative dissolution	\$30
(17) Articles of correction	\$30
(18) Certificate of change of registered agent	No Fee
(19) Application for certificate of existence or authorization	\$15
(20) Biennial report filed in writing, including by facsimile	\$30
(21) Biennial report filed by electronic medium	\$20
(22) Articles of merger involving a domestic limited liability company	\$90
(23) Any other document required or permitted to be filed under this article	\$30
(24) Registration of intent to sell sexually explicit materials, products, or services	\$250

(b) The fee set forth in subsection (a)(20) for filing a biennial report is fifteen dollars (\$15) per year, to be paid biennially.

(c) The secretary of state shall collect a fee of \$10 each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, that party is entitled to recover this fee as costs from the nonprevailing party.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:

(1) One dollar (\$1) per page for copying.

(2) Fifteen dollars (\$15) for certification stamp.

(e) If the document described in subsection (a)(1) or (a)(13) is filed by electronic means as prescribed by the secretary of state, the

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secretary of state shall collect a filing fee of seventy-five dollars (\$75).".

Page 2, line 10, delete "and Services".

Page 2, line 11, delete "means an individual, a" and insert "**has the meaning set forth in IC 35-41-1-22.**".

Page 2, delete lines 12 through 13.

Page 2, line 14, delete "For purposes of this chapter, materials, products, or" and insert "**As used in this chapter, "sexually explicit materials" means a product or service:**

(1) that is harmful to minors (as described in IC 35-49-2-2), even if the product or service is not intended to be used by or offered to a minor; or

(2) that is designed for use in, marketed primarily for, or provides for:

(A) the stimulation of the human genital organs; or

(B) masochism or a masochistic experience, sadism or a sadistic experience, sexual bondage, or sexual domination."

Page 2, delete lines 15 through 28.

Page 2, line 31, after "a" insert ":

(A)".

Page 2, line 33, delete "8-1-32.6-3)." and insert "**8-1-32.6-3);**

(B) physician; or

(C) public or nonpublic school."

Page 2, line 34, after "not" insert "**offer for sale or**".

Page 2, line 35, delete "materials, products, or services" and insert "**materials**".

Page 2, line 39, delete "violates" and insert "**offers for sale or sells sexually explicit materials in violation of**".

Page 2, line 39, after "commits" insert "**unregistered sale of sexually explicit materials,**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1042 as reprinted January 30, 2008.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 0.

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